

**ARIZONA JUDICIAL COUNCIL'S  
Committee on Superior Court**

**MINUTES**

For Meeting held Friday, June 6, 2003  
State Courts Building, Conference Room 119A & B  
Phoenix, AZ

**Members Present:**

Honorable Fred Newton (Chair)  
Honorable Silvia Arellano  
Honorable James E. Chavez  
Honorable Norman J. Davis  
Ms. Deborah R. Dyson  
Honorable Pat Escher  
Honorable Charles V. Harrington  
Honorable Bethany G. Hicks  
Honorable R. Douglas Holt  
Honorable Brian Ishikawa  
Honorable Michael K. Jeanes

Honorable Gloria J. Kindig  
Mr. Gary Krcmarik  
Mr. Marty Krizay  
Honorable Kenneth Lee  
Honorable Denise I. Lundin  
Honorable Margaret Maxwell  
Honorable Leslie Miller  
Honorable Barbara Mundell  
Honorable Nanette Warner  
Honorable Raymond W. Weaver, Jr.

**Members Absent:**

Honorable Kirby Kongable  
Honorable Stephen F. McCarville

Mr. Marcus Reinkensmeyer  
Mr. Charles W. Wirken

**Guests:**

Ms. Theresa Barrett, AOC  
Mr. Mike DiMarco  
Mr. Dan Levey, Office of the Governor  
Mr. Robert Ellman, Office of the Attorney  
General  
Honorable H. Jeffrey Coker  
Bob James, CIDVC-DV Forms Workgroup  
Ms. Amy Wood, AOC

Mr. Robert Roll, AOC  
Nancy Swetnam, AOC  
Ms. Linda Grau, AOC  
Ms. Lorraine Brown, MVD  
Ms. Rose Slusser, MVD  
Ms. Kathy Waters, AOC  
Mr. Todd Adkins, AOC

**Staff:**

Ms. Susan Pickard

Ms. Isabel Gillett

## Regular Business

**Welcome and Opening Remarks . . . . . Hon. Fred Newton**  
Judge Fred Newton, Chair, called the meeting to order at 10:10 a.m. He welcomed everyone. All in attendance introduced themselves.

Judge Newton advised the committee that a quorum was present to constitute the Committee's actions.

**Note:** This was the first meeting where the members downloaded the agenda, previous meeting minutes and meeting handouts from the Arizona Judicial Branch (AJB) web site.

**Approval of Minutes from January 10, 2003 Meeting . . . . . Hon. Fred Newton**  
Gary Krcmarik was added to the list of those in attendance. The spelling of Michael Jeanes' name was corrected in two places on page 3.

**Motion: Approve minutes for the January 10, 2003 meeting as revised.  
Seconded and passed unanimously. COSC-03-006**

## Business Items/Potential Action Items

**Information Dissemination . . . . . Ms. Theresa Barrett**  
This agenda item, originally scheduled for 2:15 was taken out of order to permit Mr. DiMarco's return from another meeting.

Ms. Barrett described the current methods used by the Supreme Court and the AOC to disseminate information to the Superior Court. The methods include live broadcasts, e-mail, the various committee structures and the notification system used for Administrative Orders and new Opinions. She asked the committee for ideas for improving the current system. Members readily agreed that e-mail notification and web page accessibility were among their favorite ways to receive information and suggested the following additions:

1. Subscription-based, e-mail notification of minute availability for AJC and its advisory committees.
2. An AOC topic-based phone listing.
3. Expansion of presiding judge e-mails to all superior court judges.

The members in turn disseminate information to other associations and committees in which they participate. The public member provides updates to law enforcement at department meetings.

**Budget Update** ..... **Mr. Mike DiMarco**  
Mr. DiMarco provided the Committee with a brief update on the most current information regarding the FY 2004 budget and answered questions and concerns.

Among the proposals being considered in the House bill were the following:

1. Transferring the Defensive Driving Program along with its funding to MVD. The program with its funding will remain with the AOC for the next year.  
A study committee consisting of four members each from the House of Representatives and Senate, which would include the two Judiciary Committee chairs and the two Appropriations Committee chairs has been established to examine where the Defensive Driving Program should be.
2. Reinstated the 418,000 in Fill the Gap Funding that went to the outlying counties.
3. Will not be taking \$1M surcharge Fill the Gap monies to be utilized to pay Superior Court judges salaries.
4. Eliminated the 1/30,000 judge/population ratio leaving decisions regarding judicial resource increases/decreases to the County Boards of Supervisors, who would in turn petition the Governor for approval.

With the bill moving to the Senate

1. Senator Meade was a no vote, but 16 votes were still available for passage.
2. Senator Binder objected to including policy issues in the bill. The Senate no longer had the 16 votes for passage.

A Senate committee including three democrats and four republicans was established to hammer out a negotiated budget. They reached an agreement on June 15. Final amendments are now being placed into the bill. Among the amendments that are possible:

- \$5.4M in for non-Maricopa County Probation.
- Maricopa County will now be paying for their Adult Probation Services and the Board of Supervisors gains administrative supervision.
- Fine increases
- \$45M from penalty enhancement to General Fund to offset employee retirement program contribution increases.
- The suspension of probation officer caseload requirements.
- Fee increases

Judge Newton noted that he will be discussing the renewal of the previously established Budget Workgroup to develop and recommend best practices, alternate funding sources and innovative budgeting ideas with select members in the interim before the Committee's next meeting.

The members were interested in having a dedicated position within the AOC to seek out various funds for courts.

**Petition to Amend Rule 39, Arizona Rules of Criminal Procedure . . Mr. Dan Levey  
Mr. Robert Ellman  
Hon. Brian Ishikawa**

Mr. Dan Levey, Advisor to Governor Janet Napolitano for Victims, and Mr. Robert Ellman, Assistant Attorney General, presented the petition to amend Rule 39. Although the rule provides for written notice to victims of their rights, it does not require the court to expressly advise victims of these rights. The proposed amendments to Rule 39 would require:

1. the court to provide an oral advisory to the victim of their rights if they are present at the initial appearance, status conference or change of plea hearing in all felony and misdemeanor cases involving physical injury to a victim, and
2. the prominent display of a victim's rights advisory.

The purpose of this petition is threefold:

1. providing equal status for victims' rights with the rights of the defendant in the courtroom,
2. having those rights acknowledged by the court, and
3. educating the community.

The meeting materials distributed on the AJB web site included the petition and comments from the National Organization of Parent of Murdered Children, Inc., the National Center for Victims of Crime, Maricopa County Attorney and the Limited Jurisdiction Committee.

The Committee members expressed the following concerns and comments:

1. reading the victims' rights in court seems very redundant when the victim should have been advised of their rights by the prosecutor, victim advocate and/or law enforcement
2. reading the victims' rights in court does not provide meaningful contact/dialogue.
3. the victims' rights, as written to be read in court, may not be understood by all victims which places the burden of ensuring understanding upon the judicial officer
4. possible revictimization of victims who do not wish to be recognized by the court.
5. impact on the court related to the time available when reading the advisory several times throughout the day either due to a "cattle call" where parties arrive at different times or court policy requiring the cases to be call separately
6. impact on the court related to the additional time needed when translation is required.
7. political implications given the support the courts have received from the Governor.

The Committee members suggested testing the requirements of the petition prior to them being finalized. Judges Holt, Kindig and Escher offered their courts as a test ground.

Judge Newton established a subcommittee to draft comment on or before August 15, which will be disseminated to the membership via e-mail when complete. Members of this subcommittee are Judges Holt, Ishikawa, Miller and Escher and Martin Krizay, with Judge Ishikawa as Chair.

**Minute Entry Reform Workgroup . . . . . Ms. Denise Lundin  
Hon. Jeffrey Coker**

Ms. Lundin and Judge Coker presented the rule change petition as proposed by the Minute Entry Reform Workgroup which would establish a new supreme court rule defining the term “minute entry” to distinguish it from an order or notice. The definitional rule is intended to further the goal of eliminating inappropriate use of minute entries.

The rule change also proposes statewide adoption of Maricopa Local Rule 3.2(i), which will reduce the number of minute entries by requiring parties to file proposed orders on stipulations and motions. The rule states that “no minute entry shall issue” if the proposed form of order is signed.

Two points were emphasized: 1) this proposal allows for local culture and 2) it is anticipated that the presiding judge and the clerk will work together to come to agreement on implementation.

During discussion, the proposed rule provided by the Workgroup was amended as follows:

“(1) All written stipulations shall be accompanied by a proposed form of order. The party submitting the stipulation shall include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an ~~appearing~~ appearance in the case unless otherwise provided for by the presiding judge. If the proposed form or order is signed, no minute entry shall issue.

(2) Any motion that is accompanied by a proposed form of order shall also include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an appearance in the case unless otherwise provided for by the presiding judge. If the proposed form of order is signed, no minute entry shall issue.”

**Motion: Approve the petition as amended for submission. Seconded and passed unanimously. COSC-03-007**

**Tracking Jury Anonymity at Polling . . . . . Hon. Jeffrey Coker**

Judge Coker is presenting this topic on behalf of Honorable Sheri Newman. The Jury Practices Committee recommendations approved by the Arizona Judicial Council in March 2003, require that judges and court staff refrain from referring to jurors by their name during polling at verdict. This recommendation was recently codified as section 5-203(D)(3) of the Arizona Code of Judicial Administration.

Justice Ruth McGregor asked Ms. Newman to monitor this for the next year and report back to assist in the determination on taking the next step, which would be to keep the juror anonymous through the jury selection process. The monitoring method has not been selected yet.

The concern over the inclusion of jurors' names in the Minute Entry was expressed. Discussion on this issue is anticipated, if the next step is taken. At Judge Colin Campbell's request, the Superior Court in Maricopa County is no longer including juror information in the Minute Entry, because the Minute Entry is posted on the internet. This information is tracked elsewhere.

**Domestic Violence Forms ..... Mr. Bob James  
Ms. Amy Wood  
Mr. Robert Roll**

The Domestic Violence Forms Workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) has redrafted and revised the Petition, Order of Protection, Injunctions Against Harassment and developed a Guide Sheet. Mr. James, Chair, Domestic Violence Forms Workgroup, brought them to the committee for review and approval "in concept." These forms have been revised, in part, to ensure order enforcement by law enforcement. The forms contain a major change in logic and will have an impact on automation, both at the AOC and local court levels.

The Guide Sheet is an attempt to set forth valuable information for the petitioner/plaintiff that diverse approaches and processes throughout the state have led to be omitted. It allows the collection of the petitioner/plaintiff's address and phone number on a form that is not available to the public. This same information gives staff the information necessary for case initiation in their case management system.

The Petition is a single document consolidating the petitions for Order of Protection, Injunction Against Harassment or Injunction Against Workplace Harassment. Margin rules for the Superior Court will be adhered to for those courts. The defendant description is no longer included on this form, but has been moved to the Guide Sheet.

The Order of Protection illustrates the logic change, which is in the section headed "**No Contact.**" What was once a statement that listed prohibited contact, is now a statement that prohibits all contact except those ordered therein. This same design strategy has been included in the Injunctions Against Harassment.

The Committee offered suggested language changes and voiced concern regarding protective orders that are issued in a Limited Jurisdiction Court and are later transferred to the Superior Court and the margin conflicts that arise due to the differing margin standards in those courts. Mr. James will take all of the comments and concerns back to the Workgroup.

The timeline involved to full implementation of the new forms would be one year after AJC approval due to automation system updates and preprinted and/or multi-part forms.

The Workgroup's intent was to provide documents that enable judges and staff to do their job in the most effective and efficient manner, to protect victims, give defendants an opportunity to be heard and to make general improvements to the system.

Mr. Robert Roll, Data Warehouse Manager, Administrative Office of the Courts, took the members through the systems (AZTEC and non-AZTEC), processes, training issues (court staff and law enforcement) and costs (reprogramming, testing, implementation, printing, etc.) involved in updating automation systems to conform with the new logic and order of the forms.

**Motion: Recommend adoption of the forms. Seconded and passed unanimously.  
COSC-03-008**

**Legal Document Preparer Program ..... Ms. Nancy Swetnam  
Ms. Linda Grau**

Earlier this year the Supreme Court adopted amendments to Rule 31, Rules of the Supreme Court and enacted a new section of the Arizona Code of Judicial Administration, §7-208: Legal Document Preparer. The new certification requirements take effect on July 1, 2003.

Chief Justice Jones has appointed the Board of Legal Document Preparers (“Board”). The Board will make recommendations to the Supreme Court on rules, policies and procedures to implement the new provisions, and will make all decisions regarding certification and discipline of certified legal document preparers. Judge Roland Steinle III, of the Superior Court in Maricopa County, is the chair of the Board.

Applications for certifications must be received by the program by Thursday, June 5, 2003 in order to be considered for certification by July 1, 2003.

Pursuant to §7-208(H)(2), all judicial officers or their designees and all certified legal document preparers shall, and any person may notify the program if they believe a certified legal document preparer has violated §7-208.

The Board will be reviewing in excess of 350 applications for certification in the upcoming months.

Responses to the concerns expressed by the members are summarized as follows:

1. If a document preparer does not apply for or receive certification and continues to prepare documents. A complaint can be brought to the Board, cease and desist orders made, sanctions imposed, etc.
2. The rule prohibits disbarred attorneys from becoming document preparers. Additionally it prohibits them from holding interest in business entities who are seeking certification.
3. Attorneys who have been suspended are not prohibited, but it is a factor that will be considered in the application process.

**Informational only.**

**Arizona Code of Judicial Administration § 7-201 and 7-202 . . . Ms. Nancy Swetnam**  
Arizona Code of Judicial Administration §7-201: Certification Programs, sets forth general certification procedures and the disciplinary process for the following programs: Confidential Intermediary Program, Defensive Driving Program and the Fiduciary Program. These provisions are currently contained in Rule 1. The new §7-201 makes both technical and substantive changes to Rule 1, essentially resulting in a complete rewrite of the procedures.

Both §7-201 and §7-202 are being circulated for a public comment period from June 1st to August 15, 2003. Following the public comment period, the revised code sections will be forwarded to the Arizona Judicial Council for consideration at its October meeting. The code sections will then be sent to the Chief Justice for review and adoption.

Members of the Committee on Superior Court are asked to review the proposed code sections during the public comment period and provide feedback. Staff provided copies of the proposed code sections, as they have been distributed for public comment, and will brief the members on the significant changes. Following the public comment period, the Committee will be asked to vote on the proposed changes.

**Informational only at this time.**

**Reporting Civil Judgments to MVD . . . . . Ms. Lorraine Brown  
Ms. Rose Slusser**

This legislative session, amendments were proposed to expand the types of judgments that, under A.R.S. § 28-4072, may result in a suspension of a vehicle registration and driving privileges until a judgment is satisfied. As a result of negotiations, the amendment was not offered but in exchange MVD agreed to change its policies in ways that should be brought to the attention of the courts.

The issue arose out of a constituent complaint from a financing company frustrated in its attempt to utilize the statutory suspension because of MVD's policy "requirement" that an accident report be furnished by the judgment creditor. The financing company had obtained the judgment for damages to an automobile that had been abandoned by the owner after defaulting on the automobile loan. (It is not clear whether the judgment was limited to vehicle damages or also included other charges related to the loan.) Although the vehicle was damaged when recovered, it was not evident that an automobile accident had occurred. Without submission of an accident report, MVD refused to suspend.

A.R.S. § 28-4071 requires a court, at the request of a judgment creditor, to forward to MVD a judgment that remains unpaid for more than 60 days. Pursuant to A.R.S. § 28-4072, on receipt of the judgment, MVD must suspend the license and registration of the debtor. Subsection C of that section allows the debtor to be relieved from the suspension by filing certain information including an affidavit stating that "at the time of the accident" the vehicle was insured and the insurer, not the owner, is responsible for payment of the judgment.



Based on the quoted language, MVD has interpreted this statute to apply only when the judgment is for damage to a vehicle as a consequence of an accident and, as a matter of policy, has required that an accident report be submitted by the judgment creditor before the suspension is imposed.

The amendment would have opened the statute to judgments other than those resulting from accident damage. Proponents argued that the definition of "judgment" in A.R.S. § 28- 4001 is broader than interpreted by MVD under A.R.S. § 28-4072. Because the amendments were offered late in the legislative session, MVD had no opportunity to evaluate programming and workload ramifications that might result from an expansion of the statute.

Ultimately, the amendment was not offered and, in exchange, MVD agreed to change its policy by no longer requiring an accident report before suspending the registration and license. However, they now will suspend only if the underlying judgment (or perhaps a transmittal document that accompanies the certified copy sent to MVD) specifies it qualifies under A.R.S. § 28-4701.

After complimenting the form's design, the committee narrowed the impact of the policy change to the Clerk's Office, in that after a judgment is awarded and not satisfied in 60 days, the attorney on record forwards the default judgment and a copy of the accident report with instructions to the Clerk to prepare the document(s) forwarded to MVD. Ms. Denise Lundin will take this issue forward to the Clerk's Association.

#### **Informational only.**

**Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices . . . . . Kathy Waters**  
Listed as separate items on the agenda Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices were presented together.

The Personnel Practices code section has been delayed for fine tuning due to the changes in the way adult and juvenile probation offices conduct business. This code is proposed to standardize probation officer hiring practices. It covers hiring practices, minimum and medical qualifications for officers, background investigations, disqualifiers for officer and safety sensitive position applicants, continuing employment requirements, psychological evaluation standards, drug testing and conditional employment offers. Ms. Waters highlighted the notable inclusions and exclusions, the Model Policy for Drug Testing, and addressed comments and concerns.

Ms. Waters noted that the Firearms Standards code was amended to be made consistent with Personnel Practices.

**Motion: Approve Arizona Code of Judicial Administration § 6-113, Firearms Standards and § 6-106, Personnel Practices. Seconded and passed unanimously. COSC-03-009**

**2003 Legislation ..... Mr. Todd Adkins**

In Mr. Tom Augherton's absence, Mr. Todd Adkins presented the various bills that have been introduced, signed or killed in this legislative session which may impact the Superior Court. Those discussed were:

HB2018 - CONCILIATION SERVICES; REVENUE ENHANCEMENT - Generates additional revenue used exclusively to carry out the purposes of conciliation services in the superior court by adding maternity and paternity cases to the present types of family law cases in which, when filing initial pleadings, litigants pay a \$65 fee under A.R.S. § 12-284(E). LAWS 2003, CH. 163

HB2108 - JUDGES; PERSONAL RECORDS; CONFIDENTIALITY - Adds Supreme Court Justices, Court of Appeals Judges, Superior Court Judges and Commissioners, Municipal Court Judges, Federal Judges and magistrates, Justices of the Peace, Public Defenders, and Federal Prosecutors to the category of persons (now police officers and prosecutors) who may request confidentiality of personal information contained in records maintained by the county recorder, county assessor and county treasurer. The population cap was left in place. LAWS 2003, CH. 106

HB2017 - PARENT EDUCATION PROGRAM; FEE - Permits local jurisdictions to charge up to \$50 (\$30 presently) for attendance in a Domestic Relations Education on Children's Issues Program. LAWS 2003, CH. 121

HB2109 - ADOPTION; CONFIDENTIAL INTERMEDIARIES; AGE REQUIREMENT - Restores to 21 the age at which a confidential intermediary (CI) may contact an adoptee and, as passed, lowers to 18 the age at which an adoptee may use the services of a CI. LAWS 2003, CH. 107

HB2020 - JUVENILE COURT COSTS; PARENTAL RESPONSIBILITY - Requires for any child referred to the juvenile court as incorrigible or delinquent and who is placed in foster care or who is ordered to comply with a treatment or education program that the court inquire into the ability of the child or the child's parent to bear all or part of the expense of foster care, treatment services or education program. LAWS 2003, CH. 23

HB2110 - ADMINISTRATIVE ASSESSMENT; CRIMINAL PROCEEDINGS; TIMING - Broadens the period of time the court may impose on defendants in criminal cases and parents or guardians of juveniles in delinquency proceedings the \$25 administrative assessment allowable under present statute to offset the costs of a public defender. LAWS 2003, CH 15

HB2401 - DEFERRED RETIREMENT OPTION PLAN - No action taken due to cost associated with passage.

**Topics for Future Discussion ..... Susan Pickard**

After reviewing the committee's minutes for the period of January 2002 through January 2003, Ms. Pickard noted that a number of topics for committee discussion/action had been noted, but no final outcome was addressed in the minutes. The topics and the committee's future intent for them are as follows:

1. Simplification of Child Support Calculations - The Committee's comments have been taken forward to the Child Support Guidelines Workgroup of the Legislature's Child Support Committee for consideration. The final outcome of the Workgroup's efforts will be presented to this committee for review and comment.
2. Judicial Ethics Advisory Committee (JEAC) - Opinion 2001-01, Contacting or Speaking with Members of a Discharged Jury - The Committee's comments and concerns were taken to and addressed by the JEAC. No further discussion/action is needed.
3. Attorney Conduct Regarding Juror Contact After Verdict - See Item 5 below, no further discussion/action is needed.
4. Attorney Competence and Extent of Judicial Responsibility for Parties - This falls under the purview of another committee. No further discussion/action is needed.
5. Attorney Behavior/Professionalism Training Requirement - Judge Weaver updated the committee on the training requirements set forth by the State Bar of Arizona. No further discussion/action is needed.
6. Paralegal Competence and Extent of Judicial Responsibility for Parties - No further discussion/action was requested.
7. Interpreter Services - This topic was taken up by the Committee to Study Court Interpreter Issues. After reporting back to the Arizona Judicial Council in October 2002, the Interpreter Funding Committee was established to define funding needs and develop funding resources. No further discussion/action is needed.
8. Explore the expanded use of electronic research resources rather than purchasing hard copies of texts. No further discussion/action was requested.
9. Examine and make recommendation on educational resources available to educate prospective and new court administrators. Resources have since been identified, and no further discussion/action is needed.

**Next Meeting ..... Hon. Fred Newton**

October 3, 2003

Arizona State Courts Building  
Conference Rooms 119 A&B

**Good of the Order/Call to the Public . . . . . Hon. Fred Newton**  
No public comment was made.

In having the committee meetings on Friday, those from out-of-town are encountering rush hour traffic. It was suggested that the meeting begin earlier. The members agreed that the next meeting would begin a half an hour earlier at 9:30 a.m. instead of at 10:00a.m. in the hopes of alleviating this situation.

**Adjournment**

The meeting adjourned at 2:45 p.m.

Respectfully Submitted,

Susan Pickard  
COSC Staff